

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:13 CR 130 HEA / DDN
)	
JAIME AGUIRRE-RASCON,)	
)	
Defendant.)	

ORDER DENYING MOTION TO AMEND

IT IS HEREBY ORDERED that the motion of the United States for leave to amend the indictment by interlineation (Doc. 23) is denied as moot.

If a court has the choice of two answers to an issue, one of which involves serious issues of constitutional importance and one that does not, it ought to adopt the latter. Cf., Harris v. United States, 536 U.S. 545, 555 (2002). The government would amend the indictment to change "sequent" to "subsequent."

Generally, an indictment may not be substantively amended except by the grand jury without violating the Fifth Amendment. Stirone v. United States, 361 U.S. 212, 217-19 (1960). However, the correction of a typographical error is not a substantive change and it may be done by amendment by the court. United States v. Lake, 985 F.2d 265, 271 (6th Cir. 1993)(involving the correction of a typographical change which did not alter the charging words).

However, there is no need to make the amendment the government seeks. The grand jury's term "sequent" carries a definition (as an adjective, "that follows or comes after") in the Oxford English Dictionary very similar to the definition of "subsequent" (as an adjective, "following in order or succession; coming or placed after something expressed or implied"). See <http://www.oed.com/view/Entry/176296?redirected>

[From=SEQUENT#eid](#) (last viewed April 23, 2013); <http://www.oed.com/view/Entry/192976?redirectedFrom=SUBSEQUENT+#eid> (last viewed April 23, 2013). Since both "sequent" and "subsequent" carry substantially the same definition, there is no need to change the word used by the grand jury.

/s/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on April 24, 2013.